***THE HON'BLE Mr. JUSTICE L.NARASIMHA REDDY**

W.P.No.9933 of 2005

% 23.11.2005

Between:

P.Rajagopal, S/o.Malyadri,

Nellore District and others

…Petitioners

A n d

Govt. of A.P. rep. by its

Secretary, Industries and Commerce (Sugar)

Department, Hyderabad, and others

…Respondents

! COUNSEL FOR THE PETITIOENRS: Sri P.Govinda Rajulu

^ COUNSEL FOR THE RESPONDEN: Sri S.V.Muni Reddy

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? CITATIONS:

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JUDGMENT:

The petitioners were engaged as NMRs in the Kovur Co-operative Sugar Factory Limited, the 3rd respondent herein, in or about 1990. Their wages were being revised from time to time. Through proceedings dated 04-04-2005, the 3rd respondent dispensed with the services of the petitioners and other NMRs, in pursuance of a policy decision. The petitioners challenge the same.

The petitioners contend that, at a time, when they have put in 15 years of service and were entitled to be regularised in their services, the 3rd respondent has terminated their services by issuing the impugned proceedings. They contend that the impugned proceedings were issued on the pretext that there is no work, but the same work is being extracted through Labour Contractors.

In the counter affidavit filed by the 3rd respondent, it is stated that the initial engagement of the petitioners was not proper and was contrary to relevant provisions of law. It is alleged that some incidents of theft have taken place, when the petitioners were working as NMR Security Guards. It is stated that the impugned proceedings were issued, with a view to protect the establishment and the services of, as many as 268 NMRs were dispensed with.

As regards their obligation to engage the NMRs as and when work exists, the 3rd respondent states that during the tenure of the petitioners as NMR Security Guards,

thefts have taken place, and in that view of the matter, the Security Personnel were engaged on Contract basis, through a Labour Contractor.

Sri P.Govinda Rajulu, learned counsel for the petitioners, submits that, having regard to the length of service put in by the petitioners as NMRs, and in view of the judgments of the Supreme Court, rendered from time to time, the petitioners were entitled to be regularised in a respective post. He contends that instead of implementing the said measures, the 3rd respondent dispensed with the services of the petitioners, on the ground that there is no work. He urges that though a clear promise was made in the impugned proceedings to the effect that the candidature of the retrenched NMRs would be considered, in case of need, the 3rd respndent has entrusted the security establishment to a Labour Contractor.

Sri S.V.Muni Reddy, learend counsel for the 3rd respondent submits that the petitioners do not have any vested right to continue in the employment of the 3rd respondent. He contends that the 3rd respondent incurred heavy losses and did not function for two crushing seasons. According to the learned counsel, the petitioners were not considered, for being engaged on the security wing, on account of the lapses committed by them, while they were in service.

The 3rd respondent is a Co-operative Sugar Factory. There is no denial of the fact that the State of A.P., is the major shareholder in it, and its activities are completely controlled and managed by the Government, the 1st respondent. The factory continued its activities till the crushing season of the year 2002-03. The petitioners were working as NMRs for the past 15 years, on the security side. The 1st respondent initiated steps for sale and privatisation of the 3rd respondent and several other similarly situated units, and proceeded to a substantial stage. In a batch of writ petitions, this Court nullified those steps. It was during this process, that the crushing was not undertaken for two seasons. With the change of dispensation in the Government, the 3rd respondent was put to activity. The impugned proceedings were issued as a measure, to implement the financial discipline, and to downsize the employees, through a new staffing pattern. The guidelines are said to have been stipulated by National Co-operative Sugar Factories, and recommended by the Commissioner of Sugars, the 2nd respondent.

The impugned order does not disclose that any exercise of assessment of the workload, or the nature of benefits to be extended to the effected employees, depending on the length of their service; was undertaken. Be that as it may, a clear promise was spelt out in the impugned proceedings to the effect that in case of need, the dependants of the retrenched NMRs would be considered for re-engagement on priority basis. Even assuing that the proceedings dated 04-4-2005 do not suffer from any illegality or infirmity, the 3rd respondent cannot extricate itself, from the obligation to re-engage the petitioners, if there existed work. The fact that the factory has resumed functioning, and that there is need to engage the security staff, is not in dispute. On the other hand, it is fortified with the contents in the counter affidavit. The 3rd respondent has categorically stated that it has engaged the security supervisors and security guards on contract basis. An attempt was made to project that such engagement was beneficial to them from the point of emoluments. It was also sought to be demonstrated that theft of material has taken place, when some of the petitioners funtioned as security guards.

It is not stated by the 3rd respondent that any proceedings were initiated against the petitioners, alleging that theft has taken place, during their tenure. Further, such excuses are pleaded, for the first time, when the petitioners have approached this Court. The nature of imputations is as vague as it could be. The contention put forward by the 3rd respondent could have been accepted, if it had engaged any NMR against whom, there did not exist any doubt or allegation. Refusal to engage of any security staff from the retrenched NMRs and engaging the security guards on contract basis, is a classic example of unfair labour practice by the 3rd respondent, a public sector undertaking, which is required to be a model employer. On the one hand, the respondents have brought the functioning of the sugar factory to a grinding halt on account of their inconsistent and unsustainable policies, and on the other hand, it is sought to be projected as though the petitioners and other NMRs are responsible for such malfunctioning. The acts of the respondents cannot be sustained.

This Court would have set aside the impugned order as a whole, but for the fact that a clear undertaking is furnished therein to the effect that the retrenched NMRs would be taken into service, as and when need arises. There is no denial of the fact that there existed a need to engage the security guards.

For the foregoing reasons, the writ petition is allowed, to the extent of directing the 3rd respondent to engage the petitioners as Security Guards, depending on the existence of work and that any other persons, either through the medium of Labour Contractor or otherwise, shall be engaged only after exhausting the claims of the retrenched NMRs, for re-engagement. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. –11-2005

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